

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VERIZON DIRECTORIES CORP.,

Plaintiff,

-v-

AMCAR TRANSPORTATION CORP.,

Defendant.

05 Civ. 08867 (GBD)(RLE)

ORDER

GEORGE B. DANIELS, District Judge:

Plaintiff Verizon Directories Corporation (“Verizon”) sued Amcar Transportation Corporation (“AMCAR”) for breach of contract as a result of AMCAR’s failure to pay for advertisements printed in Verizon’s yellow pages directories. AMCAR failed to file an answer or otherwise appear in the action. This Court ordered a default judgment against AMCAR, and referred the matter to Magistrate Judge Ellis for an inquest on damages, interest, attorney’s fees, and costs. AMCAR did not appear for a conference before the magistrate judge on the damages issue, and did not oppose Verizon’s memorandum on damages.

Magistrate Judge Ellis issued a Report and Recommendation (“Report”) recommending that judgment be entered for Verizon in the amount of \$260,346.24 in damages, inclusive of interest through October 10, 2008, and with the interest continuing to accrue at \$83.37 per day thereafter until the date of judgment. Magistrate Judge Ellis also recommended that Verizon be awarded attorney’s fees and costs. In his report, Magistrate Judge Ellis advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Neither party filed objections to the Report and the time to do so has expired.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections

to the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a de novo hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court “arrive at its own, independent conclusions” regarding those portions to which objections were made. Nelson v. Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if “there is no clear error on the face of the record.” Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).


Magistrate Judge Ellis properly concluded that the allegations in the complaint and the default judgment entered against AMCAR adequately supported a finding that AMCAR was liable for breach of contract. Magistrate Judge Ellis concluded that Verizon’s request for annual interest of 18% on the unpaid invoices was both provided for under the contract’s terms and permissible under New York law. He found the contract provided for late charges, attorney’s fees, and costs. However, the magistrate judge reasonably determined that the lodestar calculation for attorney’s fees should be discounted by fifteen percent, from \$17,946.68 to \$15,254.88 since the amount of time expended by plaintiff’s attorneys was unreasonable, in relation to the level of difficulty involved in the uncontested case.

After carefully reviewing the Report, the Court finds that the report is not facially erroneous. Accordingly, the Court adopts the Report and for the reasons stated therein, it is ordered that judgment be entered for Verizon in the amount of \$260,346.24 in damages, inclusive of interest through October 10, 2008, and with the interest continuing to accrue at

\$83.37 per day thereafter until the date of judgment. The Court also adopts the Report's recommendation that Verizon be awarded \$15,699.88 in attorney's fees and costs.

Dated: November __, 2008
New York, New York

SO ORDERED:



GEORGE B. DANIELS
United States District Judge